

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

11/04/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2002-014336

FILED: \_\_\_\_\_

WELLS FARGO FINANCIAL ARIZONA INC

WILLIAM R RICHARDSON

v.

CLAYTON HAMBLEN, et al.

PJ PEASE PC DENTAL CLINIC  
C/O P J PEASE  
2054 E RANCH ROAD  
TEMPE AZ 85284  
PAUL J PEASE  
2054 E RANCH ROAD  
TEMPE AZ 85284  
JEFFREY J TONNER  
MESA JUSTICE CT-WEST  
REMAND DESK CV-CCC

MINUTE ENTRY

This court has special action jurisdiction pursuant to Rule 4(b), Rules of Procedure for Special Actions. The exercise and acceptance of special action jurisdiction by an appellate court is highly discretionary,<sup>1</sup> and therefore, the decision to accept jurisdiction encompasses a variety of determinants.<sup>2</sup> Special action jurisdiction by an appellate court is appropriate where an issue is one of first impression of a purely legal question, is of statewide importance, and is likely to arise again.

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<sup>1</sup> *Blake v. Schwartz*, 202 Ariz. 120, 42 P.3d 6 (App. 2002); *Haas v. Colosi*, 202 Ariz. 56, 40 P.3d 1249 (App. 2002).

<sup>2</sup> *State v. Jones ex rel. County of Maricopa*, 198 Ariz. 18, 6 P.3d 323 (App. 2000).

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Additionally, special action jurisdiction may be assumed to correct a plain and obvious error committed by a trial court,<sup>3</sup> and may be considered when there is no equally plain, speedy, or adequate remedy by way of appeal.<sup>4</sup>

Here, special action jurisdiction will be exercised to resolve a purely legal matter concerning the lower court's refusal to enter a default judgment against Defendants. In the case at hand, Plaintiff, Wells Fargo Financial Arizona, Inc., filed a summons and complaint against Defendants, Dr. Paul J. Pease *et al*, on April 10, 2002; Defendants were served in person on April 16, 2002. On May, 8, 2002, Plaintiff timely filed an Application for Entry of Default, for ten days had passed and Defendants failed to "plead or otherwise defend," as required by law.<sup>5</sup>

On May 23, 2002, Plaintiff filed all the necessary documents for an entry of default. On May 28, 2002, Defendants filed their answer; this was nearly 42 days after service of process, and 20 days after Plaintiff filed its application for entry of default. On May 30, 2002, the clerk of the West Mesa Justice Court returned Plaintiff's Entry of Default with a handwritten note attached reading, "Answer filed 5-28-02." The "Entered" stamp had been scratched out. Plaintiff requested a reconsideration by the lower court on May 31, 2002, but received an identical response from the lower court on June 5, 2002. On June 14, 2002, Plaintiff filed a Motion to Strike Defendant's answer, and to enter a default judgment. This motion was denied by the lower court on July 8, 2002.

Rule 55(A) of the Arizona Rules of Civil Procedure states:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules, the clerk **shall** enter that party's default in accordance with the procedures set forth below.

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<sup>3</sup> *Amos v. Bowen*, 143 Ariz. 324, 693 P.2d 979 (App. 1984).

<sup>4</sup> *Schwartz*, 202 Ariz. 120, 42 P.3d 6; *State ex rel. Romley v. Superior Court*, 198 Ariz. 164, 7 P.3d 970 (App. 2000); *Luis A. v. Bayham-Lesselyong ex rel. County of Maricopa*, 197 Ariz. 451, 4 P.3d 994 (App. 2000).

<sup>5</sup> Ariz. Rules of Civ. Proc. Rule 55(A).

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And, the same rule provides in sub-paragraph (3):

A default shall not become effective if the party claimed to be in default pleads or otherwise defends as provided by these Rules prior to the expiration of ten (10) days from the filing of the application for entry of default (emphasis added).

In this case, the Defendants filed their answer prior to the expiration of ten days from the filing of Plaintiff's Application for Entry of Default. The entry of default would be ineffective, as a matter of law. No valid purpose exists to demand or require entry of an ineffective entry of default. This Court finds no error in the refusal of the Respondent Judge to enter an ineffective entry of default.

IT IS ORDERED denying all relief requested in the Petition for Special Action.

IT IS FURTHER ORDERED denying Plaintiff's request for attorney's fees.

/S/ HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT